
A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 805, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§805- Dismissal. (a) By prosecutor. The prosecutor,
5 by leave of court, may dismiss a charge and the prosecution
6 shall thereupon terminate. Such a dismissal may not be filed
7 during the trial without the consent of the defendant.

8 (b) By court. Except in the case of traffic offenses that
9 are not punishable by imprisonment, the court, on motion of the
10 defendant, shall dismiss the charge, with or without prejudice
11 in its discretion, if trial is not commenced within six months:

12 (1) From the date of arrest if bail is set or from the
13 filing of the charge, whichever is sooner, on any
14 offense based on the same conduct or arising from the
15 same criminal episode for which the arrest or charge
16 was made;



1 (2) From the date of re-arrest or re-filing of the charge,
2 in cases where an initial charge was dismissed upon
3 motion of the defendant; or

4 (3) From the date of mistrial, order granting a new trial
5 or remand, in cases where such events require a new
6 trial.

7 Subsection (b) (1) and (b) (2) shall not be applicable to any
8 offense for which the arrest was made or the charge was filed
9 before the effective date of this Act.

10 (c) Excluded periods. The following periods shall be
11 excluded in computing the time for trial commencement:

12 (1) Periods that delay the commencement of trial and are
13 caused by collateral or other proceedings concerning
14 the defendant, including but not limited to penal
15 irresponsibility examinations and periods during which
16 the defendant is incompetent to stand trial, pretrial
17 motions, interlocutory appeals, and trials of other
18 charges;

19 (2) Periods that delay the commencement of trial and are
20 caused by congestion of the trial docket when the
21 congestion is attributable to exceptional
22 circumstances;



1 (3) Periods that delay the commencement of trial and are
2 caused by a continuance granted at the request or with
3 the consent of the defendant or defendant's counsel;

4 (4) Periods that delay the commencement of trial and are
5 caused by a continuance granted at the request of the
6 prosecutor if:

7 (A) The continuance is granted because of the
8 unavailability of evidence material to the
9 prosecution's case, when the prosecutor has
10 exercised due diligence to obtain such evidence
11 and there are reasonable grounds to believe that
12 such evidence will be available at a later date;
13 or

14 (B) The continuance is granted to allow the
15 prosecutor additional time to prepare the
16 prosecutor's case and additional time is
17 justified because of the exceptional
18 circumstances of the case;

19 (5) Periods that delay the commencement of trial and are
20 caused by the absence or unavailability of the
21 defendant;



1 (6) The period between a dismissal of the charge by the
2 prosecutor to the time of arrest or filing of a new
3 charge, whichever is sooner, for the same offense or
4 an offense required to be joined with that offense;

5 (7) A reasonable period of delay when the defendant is
6 joined for trial with a codefendant as to whom the
7 time for trial has not run and there is good cause for
8 not granting a severance; and

9 (8) Other periods of delay for good cause.

10 (d) Per se excludable and includable periods of time for
11 purposes of subsection (c) (1).

12 (1) For purposes of subsection (c) (1), the period of time,
13 from the filing through the prompt disposition of the
14 following motions filed by a defendant, shall be
15 deemed to be periods of delay resulting from
16 collateral or other proceedings concerning the
17 defendant: motions to dismiss, to suppress, for
18 voluntariness hearing heard before trial, to sever
19 counts or defendants, for disqualification of the
20 prosecutor, for withdrawal of counsel including the
21 time period for appointment of new counsel if so
22 ordered, for mental examination, to continue trial,

1 for transfer to the circuit court, for remand from the
2 circuit court, for change of venue, to secure the
3 attendance of a witness by a material witness order,
4 and to secure the attendance of a witness from without
5 the state.

6 (2) For purposes of subsection (c) (1), the period of time,
7 from the filing through the prompt disposition of the
8 following motions or court papers, shall be deemed not
9 to be excluded in computing the time for trial
10 commencement: notice of alibi, requests/motions for
11 discovery, and motions in limine, for voluntariness
12 hearing heard at trial, for bail reduction, for
13 release pending trial, for bill of particulars, to
14 strike surplusage from the charge, for return of
15 property, for discovery sanctions, for litigation
16 expenses and for depositions.

17 (3) The criteria provided in subsection (c) shall be
18 applied to motions that are not listed in subsection
19 (d) (1) and (d) (2) in determining whether the
20 associated periods of time may be excluded in
21 computing the time for trial commencement.

22 (e) This section shall not apply to section 709-906."



1 SECTION 2. Chapter 806, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§806- Dismissal. (a) By prosecutor. The prosecutor
5 may, by leave of court, file a dismissal of a charge and the
6 prosecution shall thereupon terminate. Such a dismissal may not
7 be filed during the trial without the consent of the defendant.

8 (b) By court. Except in the case of traffic offenses that
9 are not punishable by imprisonment, the court, on motion of the
10 defendant, shall dismiss the charge, with or without prejudice
11 in its discretion, if trial is not commenced within 6 months:

12 (1) From the date of arrest if bail is set or from the
13 filing of the charge, whichever is sooner, on any
14 offense based on the same conduct or arising from the
15 same criminal episode for which the arrest or charge
16 was made;

17 (2) From the date of re-arrest or re-filing of the charge,
18 in cases where an initial charge was dismissed upon
19 motion of the defendant; or

20 (3) From the date of mistrial, order granting a new trial
21 or remand, in cases where such events require a new
22 trial.



1 Subsection (b) (1) and (b) (2) shall not be applicable to any
2 offense for which the arrest was made or the charge was filed
3 before the effective date of this Act.

4 (c) Excluded periods. The following periods shall be
5 excluded in computing the time for trial commencement:

6 (1) Periods that delay the commencement of trial and are
7 caused by collateral or other proceedings concerning
8 the defendant, including but not limited to penal
9 irresponsibility examinations and periods during which
10 the defendant is incompetent to stand trial, pretrial
11 motions, interlocutory appeals, and trials of other
12 charges;

13 (2) Periods that delay the commencement of trial and are
14 caused by congestion of the trial docket when the
15 congestion is attributable to exceptional
16 circumstances;

17 (3) Periods that delay the commencement of trial and are
18 caused by a continuance granted at the request or with
19 the consent of the defendant or defendant's counsel;

20 (4) Periods that delay the commencement of trial and are
21 caused by a continuance granted at the request of the
22 prosecutor if:



- 1 (A) The continuance is granted because of the
2 unavailability of evidence material to the
3 prosecution's case, when the prosecutor has
4 exercised due diligence to obtain such evidence
5 and there are reasonable grounds to believe that
6 such evidence will be available at a later date;
7 or
8 (B) The continuance is granted to allow the
9 prosecutor additional time to prepare the
10 prosecutor's case and additional time is
11 justified because of the exceptional
12 circumstances of the case;
13 (5) Periods that delay the commencement of trial and are
14 caused by the absence or unavailability of the
15 defendant;
16 (6) The period between a dismissal of the charge by the
17 prosecutor to the time of arrest or filing of a new
18 charge, whichever is sooner, for the same offense or
19 an offense required to be joined with that offense;
20 (7) A reasonable period of delay when the defendant is
21 joined for trial with a codefendant as to whom the



1 time for trial has not run and there is good cause for
2 not granting a severance; and

3 (8) Other periods of delay for good cause.

4 (d) Per se excludable and includable periods of time for
5 purposes of subsection (c) (1).

6 (1) For purposes of subsection (c) (1), the period of time,
7 from the filing through the prompt disposition of the
8 following motions filed by a defendant, shall be
9 deemed to be periods of delay resulting from
10 collateral or other proceedings concerning the
11 defendant: motions to dismiss, to suppress, for
12 voluntariness hearing heard before trial, to sever
13 counts or defendants, for disqualification of the
14 prosecutor, for withdrawal of counsel including the
15 time period for appointment of new counsel if so
16 ordered, for mental examination, to continue trial,
17 for transfer to the circuit court, for remand from the
18 circuit court, for change of venue, to secure the
19 attendance of a witness by a material witness order,
20 and to secure the attendance of a witness from without
21 the state.



1 (2) For purposes of subsection (c)(1), the period of time,
 2 from the filing through the prompt disposition of the
 3 following motions or court papers, shall be deemed not
 4 to be excluded in computing the time for trial
 5 commencement: notice of alibi, requests for discovery,
 6 motions for discovery, and motions in limine, for
 7 voluntariness hearing heard at trial, for bail
 8 reduction, for release pending trial, for bill of
 9 particulars, to strike surplusage from the charge, for
 10 return of property, for discovery sanctions, for
 11 litigation expenses and for depositions.

12 (3) The criteria provided in subsection (c) shall be
 13 applied to motions that are not listed in paragraphs
 14 (d)(1) and (d)(2) in determining whether the
 15 associated periods of time may be excluded in
 16 computing the time for trial commencement.

17 (e) This section shall not apply to section 709-906."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2012.

20

INTRODUCED BY: Calvin H. Boy
 By Request

JAN 13 2012



H.B. NO. 1774

Report Title:

Criminal Procedure; Dismissal; Abuse of Family or Household Member; Honolulu Prosecutor's Package

Description:

Codifies dismissals pursuant to Rule 48, Hawaii rules of penal procedure. Exempts cases for abuse of family or household members charges from the dismissal rule.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

